

Exhibit C



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Transcript of Kelly Bate, Continued

Date: September 23, 2022

Case: Fluor Federal Solutions, LLC -v- Bae Systems Ordnance Systems, Inc.

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Transcript of Kelly Bate, Continued

1 (1 to 4)

September 23, 2022

	1		3
1	IN THE UNITED STATES DISTRICT COURT	1	A P P E A R A N C E S
2	FOR THE WESTERN DISTRICT OF VIRGINIA	2	ON BEHALF OF THE PLAINTIFF:
3	Roanoke Division	3	NED PARROTT, ESQUIRE
4	- - - - - x	4	WATT, TIEDER, HOFFAR & FITZGERALD, LLP
5	FLUOR FEDERAL :	5	1765 Greensboro Station Place
6	SOLUTIONS, LLC, :	6	Suite 1000
7	Plaintiff, : Civil Action No.	7	McLean, VA 22102
8	v. : 7:19-CV-00698-EKD-RSB	8	(703) 749-1000
9	BAE SYSTEMS ORDNANCE :	9	
10	SYSTEMS, INC., :	10	ON BEHALF OF THE DEFENDANT:
11	Defendant. :	11	JEFFREY J. GOLIMOWSKI, ESQUIRE
12	- - - - - x	12	WOMBLE BOND DICKINSON (US) LLP
13		13	8350 Broad Street
14	Continued Deposition of KELLY BATE	14	Suite 1500
15	Conducted Virtually	15	Tysons, VA 22102
16	Friday, September 23, 2022	16	(703) 394-2275
17	10:01 a.m. ET	17	
18		18	ALSO PRESENT:
19		19	JOSEPH PORT, ESQUIRE
20	Job No.: 462748	20	Crystal Alexander,
21	Pages: 1 - 90	21	Planet Depos Remote Tech
22	Reported By: Victoria Lynn Wilson, RMR, CRR	22	
	2		4
1	Continued Deposition of KELLY BATE, conducted	1	C O N T E N T S
2	virtually.	2	EXAMINATION OF KELLY BATE PAGE
3		3	By Mr. Parrott 6
4		4	E X H I B I T S
5		5	(Attached to transcript)
6		6	BATE EXHIBIT PAGE
7	7 Exhibit 669 3/17/16 Email Chain	7	11
8	8 Exhibit 670 4/14/16 Email Chain	8	17
9	9 Exhibit 671 4/19/16 Email Chain	9	27
10	10 Exhibit 672 4/18/16 Email Chain	10	31
11	11 Exhibit 673 9/1/16 Email Chain	11	34
12	12 Exhibit 674 5/12/16 Email Chain	12	39
13	13 Exhibit 675 3/3/16 Email Chain	13	41
14	14 Exhibit 676 7/21/16 Email Chain	14	44
15	15 Exhibit 677 7/19/16 Email Chain	15	44
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17	17 Exhibit 679 12/21/17 Email Chain	17	48
18	18 Exhibit 680 7/7/16 Email Chain	18	52
19	19 Exhibit 681 8/24/16 Email Chain	19	55
20	20 Exhibit 682 10/5/16 Email Chain	20	58
21	21 Exhibit 683 11/22/16 UCO	21	63
22	22 Exhibit 684 3/30/17, PO Rev. 8, Mod. 7	22	68

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	41		43
1 document. Why did you ask her not to share the 2 document?		1 Q If the temporary facility was never 2 designed, how could you determine what the change 3 in scope would be?	
3 A I do not recall.		4 MR. GOLIMOWSKI: Objection.	
4 MR. PARROTT: If the witness could open 5 folder number 11, which we'll mark Exhibit 675. 6 (Bate Exhibit 675 was marked for 7 identification and is attached to the transcript.)		5 A It would be the differences between the 6 two scopes of work.	
8 Q There's just two emails here between you, 9 Ms. Bate, and Mr. Dixon from Fluor. Could you 10 take a moment to review the two emails.		7 MR. GOLIMOWSKI: I also want to object to 8 this document and in whole for the record. This 9 was -- an exact copy of this document was produced 10 by Fluor, meaning that Fluor was in possession of 11 this document prior to deposing Ms. Bate 12 previously. That exact copy is Fluor 00400058.	
11 A Okay.		13 Q Is it your understanding that there was 14 actually a scope of work for the temporary 15 facility from which one could make that delta 16 pricing approach?	
12 Q So, the subject matter of this email is 13 the change proposal for the boiler facility 14 relocation, in particular phase two, the 15 construction, and you advised Lura here that you 16 want to see the proposal as a delta and not as a 17 re-price.		17 MR. GOLIMOWSKI: Objection.	
18 Why did you want to see the proposal as a 19 delta? Well, first of all, what did you mean by 20 "delta"?		18 A My understanding was that there was an 19 original statement of work and the permanent 20 facility was a different statement of work.	
21 A It would have been clarifying between a 22 bottoms-up proposal and a change proposal. So, I		21 Q May I direct your attention, Ms. Bate, to 22 folder number 12.	
	42		44
1 wanted Fluor to submit a change proposal as 2 specified in -- I think it's Bar Table 15-2, where 3 you demonstrate that the cost being submitted 4 above and beyond what's already on contract are 5 the result of the change.		1 (Bate Exhibit 676 was marked for 2 identification and is attached to the transcript.)	
6 Q Ms. Bate, do you know whether any work was 7 ever performed on the design of the temporary 8 facility?		3 A Okay.	
9 MR. GOLIMOWSKI: Objection. That doesn't 10 have anything to do with this document, counsel.		4 Q Do you recall the work on the boiler 5 project that was the subject of this notice of 6 differing site condition?	
11 A I don't recall.		7 A I do not.	
12 Q Well, if -- if no work is done on the 13 temporary design and, of course, no work is done 14 on a temporary construction, do you think it's 15 reasonable for you to be asking in this document 16 for a delta pricing approach?		8 Q When you reflect in your email of 9 July 21st that this was, indeed, a differing site 10 condition, do you have any reason to believe 11 that -- or have you changed your mind at this 12 point?	
17 A I do. If -- if a contract has been 18 executed for base scope and we're making a change 19 to that, both Fluor and BAE Systems would be held 20 accountable for original pricing and would only 21 have the opportunity to recover costs that are the 22 direct result of the -- the change to scope.		13 MR. GOLIMOWSKI: Objection.	
		14 A I'm unclear on what differing site 15 condition we're referring to here.	
		16 Q Well, why don't we open up folder 13 -- 17 first, I didn't mark folder 12, which should be 18 676. And now 13 is going to be 677.	
		19 (Bate Exhibit 677 was marked for 20 identification and is attached to the transcript.)	
		21 Q See if that refreshes your recollection as 22 to the differing site condition that you described	

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1 ACKNOWLEDGEMENT OF DEPONENT

2 I, KELLY BATE, do hereby acknowledge that

3 I have read and examined the foregoing testimony,

4 and the same is a true, correct and complete

5 transcription of the testimony given by me, and

6 any corrections appear on the attached Errata

7 sheet signed by me.

8

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12 (DATE) (SIGNATURE)

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1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC

2 I, Victoria L. Wilson, the officer before

3 whom the foregoing deposition was taken, do hereby

4 certify that the foregoing transcript is a true

5 and correct record of the testimony given; that

6 said testimony was taken by me stenographically

7 and thereafter reduced to typewriting under my

8 direction; that reading and signing was not

9 discussed; and that I am neither counsel for,

10 related to, nor employed by any of the parties to

11 this case and have no interest, financial or

12 otherwise, in its outcome.

13 IN WITNESS WHEREOF, I have hereunto set my

14 hand and affixed my notarial seal this 5th day of

15 October, 2022.

16 My commission expires February 3, 2024.

17

18 *Victoria L. Wilson*

19 VICTORIA L. WILSON

20 NOTARY PUBLIC IN AND FOR

21 THE STATE OF MARYLAND

22

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